

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	SMALL CLAIMS
AGYEMANG ATTAH-POKU	:	DETERMINATION
	:	DTA NO. 819849
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Years 1999, 2000 and 2001.	:	

Petitioner, Agyemang Attah-Poku, P.O. Box 447, Uniondale, New York 11553-0447, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1999, 2000 and 2001.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York on October 21, 2004 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Dorothy Moody).

The final post hearing brief was due by January 28, 2005 and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioner has adduced sufficient evidence to substantiate the itemized deductions claimed on his personal income tax returns for the years 1999, 2000 and 2001.

FINDINGS OF FACT

1. Petitioner herein, Agyemang Attah-Poku, filed timely New York State resident income tax returns with the Division of Taxation ("Division") for the 1999, 2000 and 2001 tax years.

On said returns, petitioner reported New York adjusted gross income, New York itemized deductions and New York taxable income in the following amounts:

ITEM	1999	2000	2001
NY adjusted gross income	\$47,188.00	\$55,811.00	\$57,228.00
NY itemized deduction	21,630.00	28,239.00	27,937.00
NY taxable income	\$25,558.00	\$27,572.00	\$29,291.00

2. On audit, the Division requested that petitioner provide documentary evidence to substantiate the itemized deductions as claimed on the three returns at issue in this proceeding. After a review of the documents submitted by petitioner, the Division concluded that, for each year in dispute, petitioner had failed to adequately and properly substantiate itemized deductions in an amount greater than the \$7,500.00 standard deduction allowed a single individual. Accordingly, the Division issued a separate Statement of Proposed Audit Changes to petitioner for each year wherein it disallowed his claimed itemized deduction and, in lieu thereof, allowed the \$7,500.00 standard deduction. Each Statement of Proposed Audit Changes also asserted that interest was due, together with negligence penalties asserted pursuant to Tax Law § 685(b)(1) and (2).

3. Based on the statements of proposed audit changes, the Division issued a Notice of Deficiency to petitioner for each year in dispute asserting that the following amounts were due:

ITEM	1999	2000	2001
Tax	\$966.00	\$1,421.00	\$1,401.00
Interest	205.92	171.36	108.00
Penalties	151.25	156.72	124.44
Payments	1.08	-0-	-0-
Total	\$1,322.09	\$1,749.08	\$1,634.24

4. Petitioner timely protested the three notices of deficiency by filing a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). As the result of additional documentation provided at a conciliation conference, the Division's advocate accepted that petitioner had adequately substantiated itemized deductions in the amounts of \$5,200.00, \$3,800.00 and \$8,680.00 for 1999, 2000 and 2001, respectively. Since substantiated itemized deductions for 1999 and 2000 were less than the allowable \$7,500.00 standard deduction, the asserted tax due for these two years remained unchanged. For 2001, the tax due was reduced to \$1,319.00 with the allowance of itemized deductions in the sum of \$8,680.00. The advocate also agreed to the cancellation of the negligence penalties for all three years in question. Notwithstanding the adjustments proposed by the advocate, the BCMS conciliation conferee issued conciliation orders dated December 19, 2003 which sustained in full the three notices of deficiency at issue herein. At the small claims hearing held on October 21, 2004, the Division's representative stipulated to the cancellation of the negligence penalties for all three years and the allowance of \$8,680.00 of itemized deductions for the 2001 tax year.

5. Based on documentation submitted at the small claims hearing, the Division stipulated to the allowance of additional itemized deductions of \$700.00 for 1999; \$2,050.00 for 2000 and \$3,110.00 for 2001. Petitioner submitted further evidence post hearing which adequately documents additional itemized deductions for the following items and in the following amounts:

ITEM	1999	2000	2001
Transportation	\$3,400.00	\$1,700.00	\$-0-
Research assistants	2,010.00	2,800.00	1,360.00
Printing	-0-	4,470.00	-0-
Office expense	-0-	1,000.00	-0-

Tax preparation fee	150.00	150.00	250.00
Total	\$5,560.00	\$10,120.00	\$1,610.00

6. During the years at issue, petitioner, a Ph.D., was employed as a professor of African-American studies at Nassau Community College. Petitioner conducted extensive research in Africa, in particular in Ghana, during the three years in question. As the result of his research, petitioner has authored four books and is in the process of working on three more. Petitioner's books and research are used in and relate to the courses he teaches at Nassau Community College. The Division, at the small claims hearing, conceded that the employee business expenses claimed by petitioner are allowable miscellaneous itemized deductions and it only seeks to have petitioner substantiate the actual dollar amounts expended.

7. Petitioner's claimed deductions for contributions totaled \$4,950.00 for 1999; \$5,980.00 for 2000 and \$6,955.00 for 2001. For the 2001 tax year, the Division has stipulated that petitioner is entitled to deduct \$1,760.00 for contributions made to the Salvation Army and this amount was included in the \$3,110.00 stipulated amount set forth in Finding of Fact "5". The balance of petitioner's contributions were to various organizations in Ghana and also "handouts to the destitute and disabled in Ghana." The Division does not dispute the dollar amount of the contributions made by petitioner to the various organizations in Ghana; however, it maintains that under Federal regulations only contributions made to organizations created in or under the laws of the United States, with exception for certain charities in Canada, Mexico and Israel, are qualifying organizations for purposes of tax deductible donations.

CONCLUSIONS OF LAW

A. Addressing first the issue of the deductibility of certain contributions petitioner made to various organizations in Ghana, it is clear that the contributions are not deductible. Pursuant

to the Federal conformity provisions of Article 22 of the Tax Law, it is necessary to turn to the applicable provisions of the Internal Revenue Code (“IRC”) to determine if donations made to organizations in Ghana qualify as deductible charitable contributions. As relevant to this proceeding, IRC § 170(c) defines a charitable contribution as a contribution or gift to a corporation, trust, or community chest, fund, or foundation which is “created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia or any possession of the United States. . . .” In the instant matter, petitioner does not argue and has presented no evidence to show that the charities he contributed to in Ghana were created or organized in the United States and therefore the contributions are not deductible as a matter of law.

B. Turning next to claimed miscellaneous itemized deductions, petitioner has provided adequate substantiation for the following amounts:

ITEM	1999	2000	2001
Allowed at BCMS	\$6,130.00	\$4,900.00	\$9,810.00
Stipulated at hearing	700.00	2,050.00	1,350.00
Documented post hearing	5,560.00	10,120.00	1,610.00
Total	12,390.00	17,070.00	12,770.00
Less 2% AGI limitation	930.00	1,100.00	1,130.00
Miscellaneous expenses	\$11,460.00	\$15,970.00	\$11,640.00

C. Since all of petitioner’s donations in 1999 and 2000 were to organizations located in Ghana, thereby preventing him from deducting any of these contributions, his substantiated and allowable New York itemized deductions total \$11,460.00 for 1999 and \$15,970.00 for 2000. For the 2001 tax year, petitioner is allowed charitable contributions of \$1,760.00 for donations

made to the Salvation Army and therefore substantiated New York itemized deductions for this year total \$13,400.00 (\$11,640.00 + \$1,760.00).

D. The petition of Agyemang Attah-Poku is granted to the extent indicated in Conclusions of Law “B” and “C”; the Division is hereby directed to recompute petitioner’s personal income tax liability consistent with this determination; the negligence penalties for all three years are canceled in full as stipulated by the Division, and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
April 28, 2005

/s/ James Hoefer
PRESIDING OFFICER